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Attorneys for Defendants JOSEPH P. MELEHAN,
and MAUREEN MELEHAN MACHADO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SCOTT JOHNSON	)	Case No. 5:16-CV04064-HRL
)	
Plaintiff	)	DECLARATION OF SARAHANN
	)	SHAPIRO IN SUPPORT OF
v.	)	DEFENDANTS' MOTION TO DISMISS
	)	PURSUANT TO FEDERAL RULE OF
JOSEPH P. MELEHAN, Trustee of the	)	CIVIL PROCEDURE 12(b)(1) AND
Patricia Melehan Trust; MAUREEN	)	12(b)(6)
MELEHAN MACHADO, Trustee of the)	
Patricia Melehan Trust; and DOES 1-10	)	Date: August 22, 2017
inclusive,	)	Time: 10:00 a.m.
	)	Dept: Courtroom 2, 5th Fl.
Defendants	)	Judge: Hon. Howard R. Lloyd
)	
	)	Action Filed: July 19, 2016
	)	Trial Date: TBA

I, Sarahann Shapiro, declare as follows:

1. After reviewing the Complaint, it appeared to me that the allegations contained in it might be moot. Therefore, with authorization of Defendants, I hired a Certified Access Specialist to confirm that the barriers alleged in the Complaint did not exist.

2. Since I reasonably believed that none of the barriers existed, I proceeded to call Plaintiff's counsel to meet and confer regarding the potential dismissal of the Complaint, rather than requiring me to file a Motion to Dismiss.

3. I called several more times, asking for Plaintiff's counsel to return my call. I never received a call back.

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4. In lieu of a call back after my final call, I received an email from Russell Handy, counsel for Plaintiff, who asked me to explain the basis of the Motion to Dismiss. I sent him a detailed email setting out the basis of the Motion. I requested that he get back to me in a short period of time so that I could respond to the Complaint. Alternatively, I indicated that he could extend my time to respond if he needed a few more days to discuss this situation with his client.

5. I received no response to this email. At the end of that week, I sent another email indicating that I had assumed he wanted additional time and that I would wait to hear from him on my request to have the Complaint dismissed.

6. After another week had gone by, I sent an email to Mr. Handy indicating that I would proceed to draft and file my Motion to Dismiss and requesting that he refrain from filing a Request for Entry of Default since he had not gotten back to me on the meet and confer process.

7. A true and correct copy of the string of emails mentioned in the above paragraphs is attached hereto as Exhibit A.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: June 26, 2017

PAHL & McCAY
A Professional Law Corporation

By: /s/ Sarahann Shapiro
Sarahann Shapiro, Esq.

Attorneys for Defendants
JOSEPH P. MELEHAN and MAUREEN
MELEHAN MACHADO

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Sarahann Shapiro

From: Sarahann Shapiro
Sent: Monday, June 19, 2017 9:38 AM
To: 'Russell Handy'
Cc: 'Phyl Grace'
Subject: RE: Johnson V. Melehan - Meet and Confer on Motion to Dismiss

Hello!

It has now been two weeks and I still have not heard back from you regarding my request that you dismiss the suit against my clients. I will therefore assume that you are refusing to dismiss your Complaint and I will draft and file my Motion to Dismiss. Please confirm that you have calendared the date of my response as no earlier than July 10, 2017. If you expect a response on file earlier than that date, please inform me immediately. We have every intention of responding and no intention to allow this matter to go by default.

Sarahann



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From: Sarahann Shapiro
Sent: Friday, June 09, 2017 9:52 AM
To: 'Russell Handy'
Cc: 'Phyl Grace'
Subject: RE: Johnson V. Melehan - Meet and Confer on Motion to Dismiss

Hello!

Since I have not yet heard back from you on this e-mail, I will take that as your acceptance of my proposal, that my clients' deadline to respond be set three weeks after you get back to me on this meet and confer.

I look forward to hearing from you.

Sarahann

From: Sarahann Shapiro
Sent: Monday, June 05, 2017 10:33 AM
To: 'Russell Handy'
Cc: Phyl Grace
Subject: RE: Johnson V. Melehan - Meet and Confer on Motion to Dismiss

Hello!

My first question in my phone calls was to confirm the dates of service and response. According to my information, you completed service of the Complaint on May 31, so our response is due on or before June 21. Please let me know if you disagree with this response date.

With respect to the Motion to Dismiss, the primary basis is a lack of subject matter jurisdiction in the Federal court. If I am reading your Complaint correctly, your client alleges that he visited the property once per month in March, April, May and June 2015, and again in February, March and April of 2016. For each of these visits, he alleges that the parking lot lacked a van-accessible space and that the existing space was not laid out correctly. We have no information on the condition of the space as of 2015, but as the property exists today, none of these allegations are in fact true. As I understand it, the property has two disabled access spaces with a shared access aisle, one van accessible and one standard. Since none of the alleged violations exist, the court lacks subject matter jurisdiction.

In addition, although the statute of limitations for the earlier visits has not technically expired, we believe that the doctrine of laches also bars your Complaint. Based on a number of other cases that I have settled with your office, I know of no reason why your client could not have filed his complaint in 2015 since he certainly filed other Complaints relating to that time period that have passed through my office. But because he waited two years on this one, we have suffered severe evidentiary prejudice with respect to these claims. There is no way for us to investigate now the condition of the parking lot from two years ago. He alleges visiting the FastSigns store, but it will be nearly impossible for us to find any way to verify or deny that claim after two years. In short, the lengthy delay between those initial visits and the filing and service of the Complaint has caused such prejudice to our ability to investigate and defend that equity should bar the Complaint, especially when it is moot anyway.

I have settled a number of other matters with your office and if this case was appropriate for settlement, I would certainly discuss that. This particular case, however, should be dismissed.

Please let me know by Wednesday, June 7, 2017, if you are willing to dismiss this case. If you are not willing to dismiss it, please let me know which Tuesdays at 10:00 am in July and August you have open on your calendar so that I can schedule the motion. If you need more time to discuss this with your client and make a decision, I am happy to extend your time to get back to me if you will extend my time to respond until three weeks after you get back to me. Please note that I am out of the office most of next week with limited e-mail access, but will try to respond as promptly as possible to any e-mails that I receive.

I look forward to hearing from you.

Sarahann



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From: Russell Handy [<mailto:russ@potterhandy.com>]
Sent: Friday, June 02, 2017 3:07 PM
To: Sarahann Shapiro
Cc: Phyl Grace
Subject: Johnson V. Melehan

Ms. Shapiro

My staff informed me that you called to meet and confer over a motion to dismiss.

My phone reception is spotty today (I am away from the office) but I am more than happy to discuss through email.

What is the basis of the proposed motion?

From: Edwin Rodriguez
Sent: Friday, June 02, 2017 10:00 AM
To: Phyl Grace
Cc: Claire Cylkowski
Subject: Johnson V. Melehan

Sarah Ann Shapiro (Def-Atty) called.

Wants to get a confirmation on a response date to meet and confer to dismiss.

Hoping to get a call today.

She's in her office till noon today.

If not, she'll be available on Monday.

408-286-5100

Edwin Rodriguez
Assistant
EdwinR@potterhandy.com

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